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FILED
JUL 5 1963
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 1074

DAVID BRILL,

Petitioner,

AGAINST

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING

To the Honorable Justices of the Supreme Court of the United States:

The petition of David Brill, one of the defendant-appellants in the case of *United States of America against James LaFazia, et al.*, respectfully prays for a rehearing by the Court in banc of this Court's decision of June 17, 1963 denying the petition for certiorari.

Statutes Involved

Petitioner was convicted of transporting stolen motor vehicles in interstate commerce and of conspiracy in violation of 18 U. S. C. 2312, 371, 2.

Petitioner respectfully requests this Court for a rehearing upon the following grounds:

1. That he is innocent having had no connection with or participation in the offenses charged.

2. That the facts necessary to sustain a conviction as to him are absent.

3. That he is an innocent victim of the machinations of the arch-conspirator, to wit: Harold Wapnick, who was tried simultaneously with petitioner and that while the evidence as to Wapnick was overwhelming, it nevertheless reacted unfavorably to petitioner who was indeed unfortunate as to be tried at the same time as said Wapnick.

4. A reading of the testimony which had been filed by the said Wapnick and certified discloses the inconsequental participation by petitioner; the honesty and good faith of petitioner in making two deliveries of automobiles merely as an errand boy and without the slightest knowledge that the cars had either been stolen or serial numbers changed; particularly so when the Trial Court erred in insfructing that the government did not have to prove petitioner's knowledge that stolen cars were being transported in interstate commerce. (Pages of record—A-36, A-189.) The Court has held that in a conspiracy case knowledge of the interestate character of the transaction is deemed requisite. *United States* v. *Crimmins* (C. C. A. 2, 1941.) The same rule must be held applicable to the substantive offense.

5. Petitioner's rights were violated by numerous irregularities. The minutes will disclose in the midst of the trial, petitioner's brother died. Petitioner had to absent himself from the courtroom for three days. Request was made to the court to halt the proceedings.

Request was denied and the trial proceeded in petitioner's absence and damaging testimony was introduced in the interim as to petitioner. More important, petitioner's request for a change of lawyers after he returned to the courtroom was denied although made in good faith for the reason that counsel representing him could not properly do so by reason of a conflict of interests. His attorney was representing a co-defendant, James LaFazia. It is clearly evident therefore that petitioner's constitutional rights were placed in jeopardy by the Court's refusal to permit him to change attorneys and its failure to permit him to have an attorney of his own choosing.

6. Numerous other irregularities occurred, to wit: request to declare a search of his home without a search warrant illegal. A slip of paper found in his home was offered in evidence over objection due to illegal search and seizure.

7. Finally, the record will disclose that the proof against petitioner was inconsistent with guilt and consistent with innocence. That the proof against him was not of a clear or conclusive character. That he did not receive a fair and impartial trial.

8. The cumulative effect of the errors, particularly the refusal of the Trial Court to permit him to have counsel of his own choosing, necessitates a reversal of petitioner's conviction. *Gordon* v. *United States*, 344 U. S. 414. Particularly true whereas in the instant case as to petitioner only, this was a "close one" and not "open and shut". The errors described herein are not harmless and were indeed prejudicial. *Bihn* v. *United States*, 328 U. S. 633; *United States* v. *Tomaiolo*, 249 F. 2d 683.

Petitioner, appearing *pro se* respectfully submits therefore that in the interests of justice there should be a re-hearing together with stay of execution.

Respectfully submitted,

DAVID BRILL,
Petitioner, pro se.

I, DAVID BRILL, petitioner appearing *pro se* hereby certify that this petition is not submitted for purposes of delay.

DAVID BRILL